

Protest of) Date: October 8, 1991
DOMINO AMJET, INC.)
Purchase Order No. 517650-91-P-0388) P.S. Protest No. 91-54

DECISION

Domino Amjet, Inc. ("Domino") timely protests the issuance of a purchase order for two high speed printers to Chesire, a Videojet Company ("Chesire"). The protester contends that the contracting officer used an incorrect price to evaluate its offer and inappropriately allowed two quotations from the same company.

On June 20, 1991, the Richmond Support Services Division received a request to purchase two high speed ink jet printers for use with optical character readers ("OCRs"). On July 24, using simplified purchasing procedures, a procurement specialist orally solicited price and other information to provide the two printers from Domino, Chesire, and Videojet International.^{1/} According to the contracting officer's report, the specialist explained to the offerors that award would be made to the offeror who submitted the best combination of price, price-related factors and other evaluation factors, such as delivery terms, training costs, ink supplies and other supplies necessary to activate a complete start-up system.

Each of the three parties solicited submitted offers. Chesire's offer was evaluated as having a price of \$11,730; Domino's price was evaluated at \$11,887; and Videojet Systems' price was evaluated at \$13,230. A purchase order was issued to Chesire on July 26.^{2/} The contracting officer states that a Domino representative called it about the status of award on July 26, and was told that award was not yet final and to call back in a week.^{3/} When the Domino representative called back on August 5, the contracting officer told him that award had been made to Chesire. Thereafter, Domino protested to this office, which received the protest on August 19.

^{1/} Videojet International referred the specialst to its local Richmond distributor, Videojet Systems, who submitted a price quote.

^{2/} According to the contracting officer, the printers were delivered on August 15.

^{3/} Domino contends that it was advised that it would be informed of further developments on July 29, but that the Support Services Division did not call on that day.

In its protest, Domino contends that when it asked the contracting officer for the quoted prices, the contracting officer included a price for Domino which was higher than the one Domino had submitted. Further, the protester asserts that it was not in the Postal Service's best interests to allow the same company to offer two price quotes for this requirement. Domino requests a revocation of this solicitation.

The contracting officer advises, in his statement, that prior to the July 24 oral solicitation, the requiring activity had received two proposals to supply these printers. The two proposals, one from Domino, dated May 8, 1991, and one from Chesire, dated July 19, 1991, were forwarded to the procurement specialist working on this requirement. The specialist decided to solicit offers using an oral solicitation since the end of the fiscal year was close and time was of the essence. She called Domino and Chesire to verify the information in their previously submitted proposals. In addition, the specialist contacted the Videojet manufacturer directly to see if a better price could be obtained. The contracting officer asserts that the Eastern Region had decided to standardize by using Videojet brand printers for its OCRs, but contends that the office still had to consider Domino's unsolicited proposal for a different model.^{4/}

Concerning Domino's contention that its price was evaluated in an amount greater than it offered, the contracting officer explains that the specialist added to Domino's unit price of \$11,250 the \$637 cost of its ink/starter kit to arrive at \$11,887. He states that Domino was informed, when contacted by the procurement specialist for a quote, that these costs would be included in the award evaluation. The contracting officer adds that no similar cost was added to Chesire's price, however, because Richmond already stocks ink for Chesire's printers. The contracting officer identifies two other expenses associated with Domino's product which would not be incurred with the Chesire product; a \$395 interface board (Chesire's board is included in its unit price) and a \$400 cost for training (Richmond personnel are already trained on the Chesire unit).

The contracting officer notes that although Chesire and Videojet Systems may be representatives of the same manufacturer, they are not the same company, as evidenced by the fact that Chesire and Videojet Systems offered two different prices on this requirement.

Discussion

Domino asserts, without elaboration, that it was not in the Postal Service's best interests to accept two quotations from "Videojet". Although Domino's protest letter is brief and it did not submit further comments, we gather that it did not understand that Chesire, a Videojet Company and Videojet Systems are two different regional distributors for Videojet International, the manufacturer. Even so, Domino seems to be alleging the possibility of collusion or other impropriety in accepting proposals from these two related companies. Its premise is incorrect. There is nothing inherently improper in allowing related or affiliated firms to propose on the same procurement. Fred Austin Trucking, Inc., P. S. Protest 86-66, December 10, 1986.

^{4/} We do not reach the merits of this contention, but we note the inherent lack of logic in the contracting officer's contention.

The protester also contends that its proposal was improperly evaluated. "When a protester claims that improper evaluation procedures were used, this office will not disturb the evaluation of a proposal unless it is shown to be 'arbitrary or in violation of procurement regulations.'" Cutler Manufacturing Corporation, P.S. Protest No. 90-28, July 5, 1990 (quoting Computer Systems & Resources, Inc., P.S. Protest NO. 86-4, March 27, 1986).

In this case, the solicitation was governed by Procurement Manual ("PM") 4.2, Simplified Purchasing. That section prescribes the manner by which fixed-price purchases under \$50,000 may be made seeking competition to the extent practicable (PM 4.2.1 d.1.) and making award on the basis of the "best value to the Postal Service" (PM 4.2.1 e.1.). Depending on the circumstances, "best value" can be measured four ways: in terms of price alone, price and price-related factors, price and other evaluation factors or price, price-related and other evaluation factors. PM 4.2.1 e.2., 3., 4., 5.

The contracting officer clearly views this procurement as based on the evaluation of price, price-related and other evaluation factors. In this regard, PM 4.2.1 e.5. states:

An award based on price, price-related, and other evaluation factors will be made on the basis of the most advantageous proposal or quotation, taking price-related factors into account in evaluating relative price, and taking other factors into account in relation to price in accordance with the pre-established evaluation strategy. . . . An award based on this combination of factors requires an evaluation strategy (see 4.2.1.e.4.(b)).

PM 4.2.1 e.4.(b) elaborates:

The evaluation strategy must identify (1) the need to use other evaluation factors, (2) the evaluation factors to be used and their order of importance, (3) the relative overall importance of the other evaluation factors to price (i.e., greater than, equal to, less than), and (4) the individual or individuals who will perform the evaluation.

In addition, PM 4.2.2 b.2.(e) instructs on the use of other evaluation factors in an oral solicitation:

Whenever other evaluation factors are used in an oral solicitation, they must be clearly identified. These factors must be communicated to each potential proposer or quoter in descending order of importance and the proposer or quoter must be informed as to their overall relation to price (i.e., greater than, equal to, or less than).

Here, it is apparent, from the contracting officer's statement, that the quoters were not adequately advised of the order of importance of the evaluation factors other than price. This was an error.

Further error occurred in the evaluation of the quotations, since it appears from the contracting officer's statement that not all of the factors orally identified to the offerors were actually used in the evaluation. Specifically, despite the inclusion of "delivery

terms" as an evaluation factor, there is no indication that terms of delivery were considered in evaluating any offer.

Instead, it appears that the offers were evaluated only on the basis of price and certain price-related factors. However, even that evaluation was flawed. The evaluation scheme was arbitrary because, even though quoters were informed that the costs of ink and supplies would be evaluated in addition to price, only Domino's price was raised by these costs. It was incorrect not to evaluate the cost of these items as to Chesire's (and presumably Videojet Systems') proposal. The fact that the Richmond facility already had supplies on hand for the Chesire equipment was not an appropriate basis not to consider the cost of those supplies; since the Postal Service would incur their cost during the operation of the Chesire printers, it was irrelevant that the supplies were already on hand.^{1/}

We sustain Domino's protest of the evaluation of its offer. There remains the question of the remedy or relief available to the protester.^{1/} Since the printers have already been delivered (indeed, as noted above, delivery occurred before the protest was received), relief is unavailable. See The Office Place, Inc., P.S. Protest No. 90-15, May 11, 1990. However, "the degree of prejudice to the integrity of the competitive procurement system will prove not to have been great provided that the lessons of this procurement are observed in future . . . procurements." Dwight Foote, Inc., P.S. Protest No. 87-90, September 28, 1987; see also Domino Amjet, Inc., P.S. Protest No. 91-45, September 11, 1991.

The protest is sustained to the extent indicated.

[Signed]

William J. Jones
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[Compared to original 5/17/95 WJJ]

^{5/} The circumstances were slightly different with regard to training costs. If, as asserted, the Postal Service had already absorbed the cost of training personnel to use the Chesire printers, and need not incur additional training costs if additional Chesire units were added, training costs need not be added to the Chesire quote.

^{6/} The record does not recite the cost of the Chesire consumables comparable to those offered by Domino. We assume, without deciding, for purposes of this decision, that as properly evaluated, Domino's price would be lower than Chesire's.